Nos. 12,349, 12,352, 12,350

In the United States Court of Appeals

For the Ninth Circuit

TIMOTHY E. ARMSTRONG, et al., *Appellants,* vs. MATSON NAVIGATION COMPANY, a corporation, *Appellee and Cross-Appellant,* UNITED STATES OF AMERICA, *Appellee and Cross-Appellee.*	No. 12,349	CONSOLIDATED CASES
JAMES KEITH CURRIE, etc., *Appellant,* vs. MATSON NAVIGATION COMPANY, a corporation, *Appellee and Cross-Appellant,* UNITED STATES OF AMERICA, *Appellee and Cross-Appellee.*	No. 12,352	
DONALD G. STEWART, et al., *Appellants,* vs. MATSON NAVIGATION COMPANY, a corporation, *Appellee and Cross-Appellant,* UNITED STATES OF AMERICA, *Appellee and Cross-Appellee.*	No. 12,350	

Petition for Modification of Opinion

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111 Sutter Street,
San Francisco 4, California,
Proctors for Appellee and Cross-Appellant Matson Navigation Company.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

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Petition for Modification of Opinion

To the Judges of the United States Court of Appeals for the Ninth Circuit:

MATSON NAVIGATION COMPANY, appellee and cross-appellant herein (hereinafter referred to as "Matson"), respectfully requests that the Court modify its opinion filed on

July 18, 1950. It is specifically requested that this Court pass upon the cross-appeals of Matson and that the opinion be amended so as to remand the case to the District Court for such further proceedings as may be advisable in connection with the determination of the liability of the United States of America to Matson.

As indicated in the brief originally filed herein on behalf of Matson, it, at the time that it answered the libels, impleaded the United States of America as a party respondent based upon the charter party provisions whereby the United States agreed to indemnify Matson for certain items including war bonuses and maintenance claims. The United States, in its answers to the impleading petitions, admitted that as between it and Matson, it was liable to reimburse Matson for its actual out-of-pocket expenses for any war bonuses. Because of the fact that the trial court held that the libelants were not entitled to recover anything from Matson, this subsidiary question of the liability of the United States became moot. However, in order to protect its rights in the event of a reversal by this Court, Matson took cross-appeals from the final decree adjudging that it recover nothing from the United States either on the bonus claims or on the maintenance claims.

This Court has now reversed the District Court on the bonus claims and has affirmed the District Court on the maintenance claims. We are not challenging the decision of this Court on these issues, but we respectfully point out that the opinion of this Court makes no mention whatever of the cross-appeals taken by Matson and there is therefore left completely undecided the question of the liability of the United States to Matson for the amounts which Matson will be compelled to pay to the libelants.

The Statement of the Case and Argument in connection with this matter are completely covered in Matson's original brief, pages 6 to 9, inclusive, and it seems unnecessary at this time to repeat any of the material contained therein. However, we do point out that if the opinion is not amended, Matson may find itself in the position that when the Mandate of this Court goes down to the District Court, the latter Court might feel that it has no jurisdiction to pass upon the question of the liability of the United States to Matson.

Accordingly, it is respectfully requested that this Court pass upon the cross-appeals of Matson and that it modify its opinion so as to remand the case to the District Court for such further proceedings as may be advisable in connection with the determination of the liability of the United States to Matson based upon the impleading petitions.

Respectfully submitted,

BROBECK, PHLEGER & HARRISON,
ALAN B. ALDWELL,
Proctors for Appellee and Cross-Appellant Matson Navigation Company.

Dated at San Francisco, California,
August 17, 1950.